

A Roadmap of South Dakota's Substance Abuse Involuntary Commitment

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PART I
OVERVIEW OF THE PROCESS FOR
DEALING WITH ALCOHOLICS AND DRUG ABUSERS

A. PURPOSE OF MANUAL
ESTABLISH A WORKING HANDBOOK

This handbook will assist facility administrators, law enforcement authorities, attorneys, judges and other interested parties who must deal with the intoxicated, incapacitated, or pregnant substance abusing persons. This manual provides factual information concerning the procedural process necessary for protective custody, emergency commitment and involuntary commitment of alcohol and drug abusers. Part V clarifies issues that have an impact upon commitment procedures by dealing with statutory limitations, client's rights and other resources and constraints which limit the implementation of commitment procedures. Part VI contains sample documents used throughout the commitment process.

B. PHILOSOPHICAL LIMITATIONS
RIGHT TO DRINK

Rather than pursue criminal prosecution of intoxicated, incapacitated, and pregnant substance abusing persons, the state has attempted to provide for a continuum of treatment in order that these persons may lead normal lives as productive members of society. When a person's drinking or drug use reaches the point of "incapacitation" under the statutory definition, the person attempts, threatens or actually inflicts physical harm on himself or another, or is a pregnant substance abusing person, a legal intervention is possible.

NOT EVERYONE BENEFITS FROM TREATMENT

Another limitation to keep in mind is that not everyone may benefit from treatment. For example; a client with a severe chronic organic brain syndrome may do well in a nursing home. Some, with proper nutrition, medical care and prolonged sobriety, may show signs of clearing and become appropriate for standard alcoholism and drug abuse treatment services. Others continue to be permanently brain-damaged with no reversibility. Such clients are not likely to benefit from treatment and therefore cannot continue to be committed.

USE OF AUXILIARY SUPPORT SERVICES

The chronic "shelter" type client who does not appear to benefit from repeated treatment episodes poses a different problem from the person with severe organic brain syndrome or debilitating medical complications from alcoholism or drug abuse. The chronic client may have multiple needs which are not necessarily addressed by alcohol or drug abuse programs alone. The use of auxiliary services such as Social Services, Rehabilitation Services, or

community support functions, may be necessary. For some clients, the most beneficial intervention may be family involvement in Alanon or a mental health center. This helps the family distance themselves from the user so they are not enabling the excessive drinking or drug abuse.

MISCONCEPTION OF COMMITMENT

People still cling to the misconception of "commitment" meaning that a relative is locked up somewhere for an indeterminate period of time. **Commitment under the South Dakota statute is a time-limited period of alcohol or drug abuse treatment.** None of the facilities in the state are locked and the client retains all rights guaranteed by the constitution and statute. Commitment is an attempt to protect the client, the public, and significant other persons by providing a safe environment and clinical and therapeutic help for the committed person. Commitment is but a single link in the chain of alcohol and drug abuse recovery.

C. WHO AND WHERE MAY A PERSON BE COMMITTED

DEFINITION OF INTOXICATED, INCAPACITATED, AND PREGNANT SUBSTANCE ABUSER

Not every person that drinks or uses drugs is considered eligible to be committed. One must be intoxicated, incapacitated, or a pregnant substance abusing person.

- An **intoxicated person** is a person who demonstrates diminished mental or physical capacity as a result of the use of alcohol or other drugs. (SDCL § 34-20A-2 (11))
- An **incapacitated person** is a person who, as a result of the use of alcohol or other drugs, is unconscious or his judgment is otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment. (SDCL § 34-20A-2 (9))
- A **pregnant substance abuser** is a pregnant woman who habitually lacks self-control as to the use of alcohol or controlled drugs or substances to the extent that the woman's health, or the health of her unborn child, is substantially impaired or endangered.

DIFFERENT TYPES OF FACILITIES

Different facilities provide a broad range of care including outpatient services, halfway house placement, and community-based treatment as well as inpatient treatment or nursing home care options. Care is provided in accordance with the client's clinical needs.

An **accredited prevention or treatment facility** is a private or public agency meeting the standards prescribed in § 34-20A-27, or is a private or public agency or facility surveyed and accredited by the joint commission; an Indian Health Services quality assurance review under the Indian Health Services manual, Professional Standards-Alcohol Substance Abuse; or the

Commission on Accreditation of Rehabilitation Facilities under the drug and alcohol treatment standards incorporated and adopted by the Division in rules promulgated pursuant to chapter 1-26, where proof of such accreditation, with accompanying recommendations, progress reports and related correspondence are submitted to the Division of Behavioral Health in a timely manner. (SDCL § 34-20A-2 (1))

An approved prevention or treatment facility is an accredited agency operating under the direction and control of the state or providing services under this chapter through a contract with the Division or treatment facilities operated by the federal government which may be approved by the Division without accreditation by the state. (SDCL § 34-20A-2 (6))

D. COMMITMENT LAW CHANGES

LEGISLATURE AMENDED LAWS

Effective July 1, 1998, the South Dakota State Legislature amended the guidelines for the emergency commitment and involuntary commitment of alcoholics and drug abusers. (SDCL §§ 34-20A-63 and 34-20A-70).

The emergency commitment (34-20A-63) was expanded to provide for the protection of children from prenatal exposure to alcohol and drugs. The involuntary commitment (34-20A-70) was amended to include pregnant women abusing alcohol or drugs.

Note that voluntary treatment is encouraged whenever possible. However, protective custody and emergency commitment may reduce the danger to a person who poses an immediate threat to the health and safety of self or others. When an extended drug abuse or drinking episode can be interrupted and the intoxicated person detoxified in a safe environment, receptivity to further treatment is maximized. Because there are some alcoholics, drug abusers, and pregnant substance abusers who need treatment but do not meet the criteria for emergency commitment or protective custody, involuntary commitment may be used.

Effective July 1, 2010 the South Dakota State Legislature amended the guidelines for the Protective Custody Statute for intoxicated or incapacitated persons. (SDCL §§ 34-20A-55). The new law states that “any person who appears intoxicated or incapacitated by the effects of alcohol or drugs and is clearly dangerous to the health and safety of himself or others may be taken into protective custody by law enforcement authorities, acting on probable cause”.

The change in the law eliminates the requirement that the person be in a public place before law enforcement can place them in custody when they are intoxicated or incapacitated by the effects of alcohol or drugs and is clearly dangerous to the health and safety of himself or others.

PART II

PROTECTIVE CUSTODY OF

CLEARLY DANGEROUS INTOXICATED OR INCAPACITATED PERSONS

This section outlines the procedures whereby intoxicated persons who are clearly dangerous to the health and safety of themselves or others may be taken into protective custody by law enforcement authorities, acting with probable cause.

Protective custody is not an arrest. No entry or other record may be made to indicate that the person has been arrested or charged with a crime. (SDCL § 34-20A-56)

Protective Custody consists of the following steps:

Step 1 - Protective Custody

Step 2 - Commitment or Detainment

Step 3 - Discharge or Release

STEP 1 - PROTECTIVE CUSTODY

A. WHO MAY ACT

LAW ENFORCEMENT OFFICER

A law enforcement officer, acting with probable cause, may take a person into custody if the person is:

1. Intoxicated or incapacitated by the effects of alcohol or drugs and
2. is clearly dangerous to the health and safety of himself or others. (SDCL § 34-20A-55)

Probable cause is defined as facts and circumstances within a law enforcement officer's knowledge which would lead a reasonable, prudent person to believe that (1) and (2) above exist. Probable cause is based on everyday logic and common sense; absolute certainty is not required.

B. WHAT ACTION IS APPROPRIATE

TAKE TO AN APPROVED TREATMENT FACILITY OR HOSPITAL OR JAIL

When a person is taken into protective custody, the person must be taken directly to an approved treatment facility offering detoxification services for those individuals who have been committed under an emergency commitment. If no approved treatment facility is readily

available, the individual may be taken to an emergency medical service or jail, but only until no longer intoxicated or incapacitated or only so long as may be necessary to prevent injury to himself or others. (SDCL § 34-20A-55)

A list of approved detoxification/treatment facilities is located on the Division of Behavioral Health website...<http://dss.sd.gov>. If more immediate information is needed, one should contact the local community referral and counseling center or contact the Division at 605 773-3123.

STEP 2 - COMMITMENT OR DETAINMENT

A. COMMITMENT NOT APPROPRIATE GROUNDS NOT MET

If the approved treatment facility administrator or authorized designee determines that the emergency commitment is not appropriate, the person may be detained as a patient in protective custody. The person should be held until no longer intoxicated, or up to forty-eight hours after admission. (SDCL § 34-20A-55)

B. COMMITMENT APPROPRIATE GROUNDS MET

If the approved treatment facility administrator or authorized designee determines that the emergency commitment is appropriate, the person shall be committed according to the emergency commitment process set forth in Part III of this manual.

C. FURTHER DETAINMENT FURTHER DETAINMENT IF A PERSON IS DISRUPTIVE

If any person taken into protective custody or detained under emergency commitment is disruptive beyond the ability of the facility to control the person's behavior, or leaves without staff approval, the facility administrator or an authorized designee should contact law enforcement authorities. The authorities may further detain the person at whatever level of confinement is necessary to protect the detainee or others. (SDCL § 34-20A-64.1)

Any law enforcement officer, in detaining a person and in taking him to an approved treatment facility for emergency commitment, is taking the person into protective custody. The officer must make every reasonable effort to protect the person's health and safety. However, the detaining officer may take reasonable steps to protect himself. (SDCL § 34-20A-56)

STEP 3 - DISCHARGE OR RELEASE

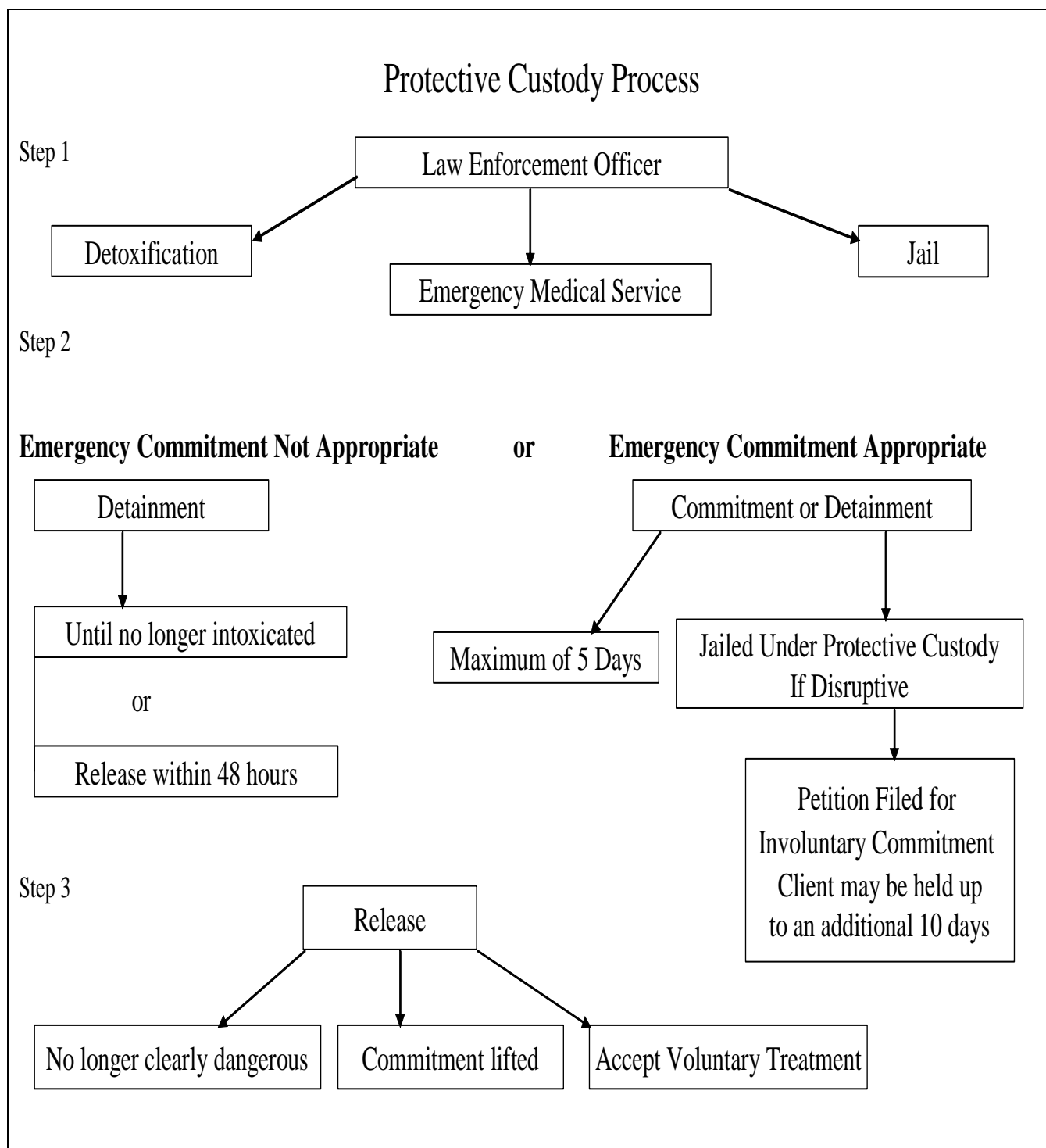
A. DISCHARGE

FOLLOW DISCHARGE PROCEDURES

If a person has been committed by the approved treatment facility administrator or authorized designee, he can only be discharged according to the discharge procedures for that process. Part III explains the emergency commitment discharge process.

B. RELEASE

If a person was not admitted at the approved facility for emergency commitment but detained as a patient under protective custody, he must be released when he is no longer intoxicated or within 48 hours of his admission. If the person was being held in an emergency medical facility or a jail because no approved facility was available, he must be released as soon as he is no longer intoxicated or incapacitated or so long as necessary to prevent injury to himself or others. (SDCL §34-20A-55).



PART III

EMERGENCY COMMITMENT

OF INTOXICATED OR INCAPACITATED PERSONS, OR PREGNANT SUBSTANCE ABUSERS

This section outlines the procedures whereby intoxicated, or incapacitated persons, or pregnant substance abusers may be committed to an approved treatment facility for a period of up to five days.

The emergency commitment application for intoxicated, or incapacitated persons who has threatened, attempted, or inflicted physical harm on themselves or on another or is likely to inflict physical harm on another unless committed, or a pregnant women who are abusing alcohol or drugs.

Emergency commitment consists of the following steps:

Step 1 - Application for commitment

Step 2 - Commitment

Step 3 - Discharge

STEP 1 - APPLICATION FOR EMERGENCY COMMITMENT

A. WHO MAY MAKE APPLICATION FOR COMMITMENT

ANY RESPONSIBLE PERSON MAY MAKE APPLICATION

A law enforcement officer, physician, spouse, guardian, relative of the person to be committed, or any other responsible person may make a written application for emergency commitment. (SDCL § 34-20A-64)

B. WHERE TO APPLY FOR EMERGENCY COMMITMENT

APPLY AT APPROVED TREATMENT FACILITY

Applications for emergency commitment are kept by approved treatment facilities. These facilities are classified as approved because they operate under the direction and control of the state or provide services through a contract with the Division of Behavioral Health. A list of approved detoxification/treatment facilities is located on the Division of Behavioral Health website...<http://dss.sd.gov>. If more immediate information is needed, one should contact the local community referral and counseling center or the Division of Behavioral Health at 605 773-3123.

C. WHAT THE APPLICANT MUST ALLEGE

GROUND FOR COMMITMENT

In order for a person to be committed under the emergency commitment statute, SDCL § 34-20A-63, the applicant must allege that the person whose commitment is being sought is an intoxicated person who:

- has threatened, attempted, or inflicted physical harm on himself or on another or is likely to inflict physical harm on himself or on another unless committed; or
- is incapacitated by the effects of alcohol or drugs; or
- is pregnant and abusing alcohol or drugs.

An **"intoxicated"**, **"incapacitated"**, or **"pregnant substance abuser"** are defined on page 2 of this manual.

The application must also contain the specific circumstances requiring emergency commitment, including the applicant's personal observations and the specific statements of others, if any, which support the alleged grounds for commitment. Thus the application might include:

1. Specific facts or incidents at present or in recent past which indicate the individual is abusing alcohol or drugs. For example; the first sentence of the application could state, "My son has been drinking two cases of beer per day for over two weeks."

2. Specific facts or incidents which show that the abuse of alcohol or drugs has led to either:
 - a. Substantial impairment of mental or physical functioning. For example, the person would be disoriented, unable to walk without staggering, or suffering from seizures during withdrawal from alcohol or drug use; or
 - b. Inability to care for basic personal needs or safety. Examples might include refusal to eat while drinking, forgetting to take prescribed medications while intoxicated, combining medications or exceeding recommended dosages, refusal to seek medical treatment when injured, or walking in front of moving vehicles.
3. Specific facts which show that the intoxication or incapacity of the person has created a danger to him or to other persons. For example, the person could be experiencing violent rages, striking or kicking those within range, or he might be talking about suicide, or attempting to drive a vehicle, or use a dangerous weapon such as a gun or knife when intoxicated.
4. Specific facts which show that a pregnant substance abuser has endangered her unborn child by subjecting the unborn child to prenatal exposure to abusive use of alcohol or any controlled drugs or substances not lawfully prescribed by a practitioner as authorized by SDCL §§ 22-42 and 34-20B. For example, there could be instances of daily drinking, binge drinking, ingesting substances other than alcoholic beverages for the purpose of getting high, or becoming intoxicated, or if there is evidence of misuse of either prescription or over the counter medications.

A completed application might appear as follows:

"My husband has been consuming one quart of vodka a day for over 5 days. During this time, he has refused to eat, bathe, or change clothing. He has become incontinent of urine and feces. Even though he is a severe diabetic, he has stopped taking his prescribed insulin 4 days ago. He fell down the stairway and I think he has sprained his ankle and cracked his ribs. However, he refuses to seek medical help."

The sample application provides for clear documentation of an incapacitated person, or a pregnant woman who is abusing alcohol and/or drugs.

STEP 2 - THE EMERGENCY COMMITMENT

A. REFUSAL OF THE APPLICATION GROUND NOT MET

If the approved treatment facility administrator or authorized designee determines that the grounds for emergency commitment are not met, the administrator shall refuse the application.

The person detained shall be immediately released and shall be encouraged to seek voluntary treatment if appropriate, unless the person is under protective custody. In that event, the person may be detained as a client at the facility until no longer intoxicated or up to 48 hours. (SDCL § 34-20A-65)

**B. ACCEPTANCE OF THE APPLICATION
GROUNDS MET**

If the approved treatment facility administrator or authorized designee determines that the grounds for commitment are met, the person shall be committed, evaluated, and treated but may not be detained for longer than 5 days. (SDCL § 34-20A-69)

Some of the approved treatment facilities do not have the capacity to handle persons who meet the grounds for emergency commitment. In those cases, the facilities shall provide assistance in making the emergency commitment to the proper agency.

**C. HOW THE PERSON IS BROUGHT TO THE APPROVED FACILITY
TRANSPORTATION**

1. In most cases, the intoxicated client is brought to the facility by the family, neighbors, friends, AA sponsor, or other interested persons. All such transportation options should be explored, including taxi, ambulance, or police assistance depending on the client's resources and degree of combativeness.
2. A person may be taken into protective custody by law enforcement authorities who have determined that the person is clearly dangerous to himself or others. See Part I for protective custody procedures. (SDCL § 34-20A-55)

The approved treatment facility in your area may be familiar with the proper transportation options available in that area.

**D. PAYMENT FOR TREATMENT
PAYMENT**

Payment for treatment under emergency commitment may be assessed to the individual committed, to a legally responsible relative or guardian, to the county of residence if indigent, or billed to the Division of Behavioral Health through a contract with an approved treatment facility.

Any payment for emergency commitment to the Human Services Center in Yankton, South Dakota, is subject to the requirement of chapter 27A-13. (SDCL § 34-20A-66.1)

E. LENGTH OF COMMITMENT
COMMITMENT FOR UP TO 5 DAYS

The person may be held for up to 5 days excluding Saturdays, Sundays, and legal holidays if the administrator of the approved treatment facility or the authorized designee determines that the grounds for commitment continue to exist. A review on at least a daily basis must be conducted to determine if the person continues to be a danger to him or herself or others. Documentation shall be made in the client's file as to the review and the determination of the danger, including the risk of continued substance abuse by the pregnant woman.

Each program shall have a list of policy and procedures they use to determine grounds for commitment and detainment. (SDCL §§ 34-20A-68, 34-20A-69)

When the grounds for commitment no longer exist, the person committed shall be discharged. The person always has the option to continue the treatment on a voluntary basis.

A person may be detained for longer than 5 days only when a petition for involuntary commitment has been filed. If a petition for involuntary commitment has been filed within the 5 days, excluding Saturdays, Sundays, and legal holidays, and the administrator or authorized designee finds that grounds for emergency commitment still exist, the person may be detained until the petition has been heard and determined. The maximum period of detention shall not exceed ten days, excluding Saturdays, Sundays, and legal holidays, after the filing of the involuntary commitment petition. (SDCL § 34-20A-69) (See Part IV-Involuntary Commitment)

F. RIGHTS OF THE COMMITTED PERSON
RIGHT TO COUNSEL (ATTORNEY)

A copy of the written application for commitment and a written explanation of the person's right to counsel shall be given to the person within 24 hours after his commitment by the administrator of the facility. A reasonable opportunity for the person to consult counsel shall be provided.
(SDCL § 34-20A-67)

The person should sign the line at the bottom of the emergency commitment application to acknowledge that he understands his rights. If he refuses to sign, that refusal should be witnessed and documented. If he is too intoxicated to understand his rights, the procedure should be repeated as soon as he is able to comprehend the explanation.

WRIT OF HABEAS CORPUS

The committed person may also seek to be discharged from commitment by a writ of habeas corpus (stating that he has been wrongfully detained), and to have counsel appointed by the

court if assistance of counsel is desired but unobtainable. If the court determines that counsel is necessary, it shall appoint one. (SDCL §§ 34-20A-85, 34-20A-87)

In addition, the committed client is entitled to all basic patient rights as outlined in Part V-Commitment Issues in this manual.

G. TREATMENT OF THE COMMITTED CLIENT REFERRAL OR TRANSFER

The committed client shall be detoxified in a safe setting and receive alcohol and drug treatment in accordance with the Division of behavioral Health administrative rules. Clients shall receive motivational counseling to encourage them to continue services in other modalities within the treatment continuum, if appropriate, or shall receive referral to other agencies as needed.

If a client is in need of psychiatric evaluation or hospital treatment of physical complications, such referrals or transfers will be made by the treatment facility in accordance with their affiliation agreements and policy and procedures. If a client becomes violent and unmanageable, he may be transferred to a more appropriate facility, hospitalized, or jailed, but only for so long as necessary to prevent injury to himself or others or to prevent a breach of the peace. This detainment may not exceed the initial 5-day maximum allowed for emergency commitment or the 10 additional days if an involuntary commitment petition was filed. (SDCL § 34-20A-69)

LIABILITY OF PERSONNEL

Personnel operating approved treatment facilities who act in compliance with their duties are not criminally or civilly liable. (SDCL § 34-20A-69.1)

STEP 3 - DISCHARGE FROM EMERGENCY COMMITMENT

A. TRANSFER TO VOLUNTARY STATUS VOLUNTARY TREATMENT

A client may continue to receive services on a voluntary basis when he no longer meets the grounds for commitment but desires further detoxification treatment.

B. AUTOMATIC DISCHARGE

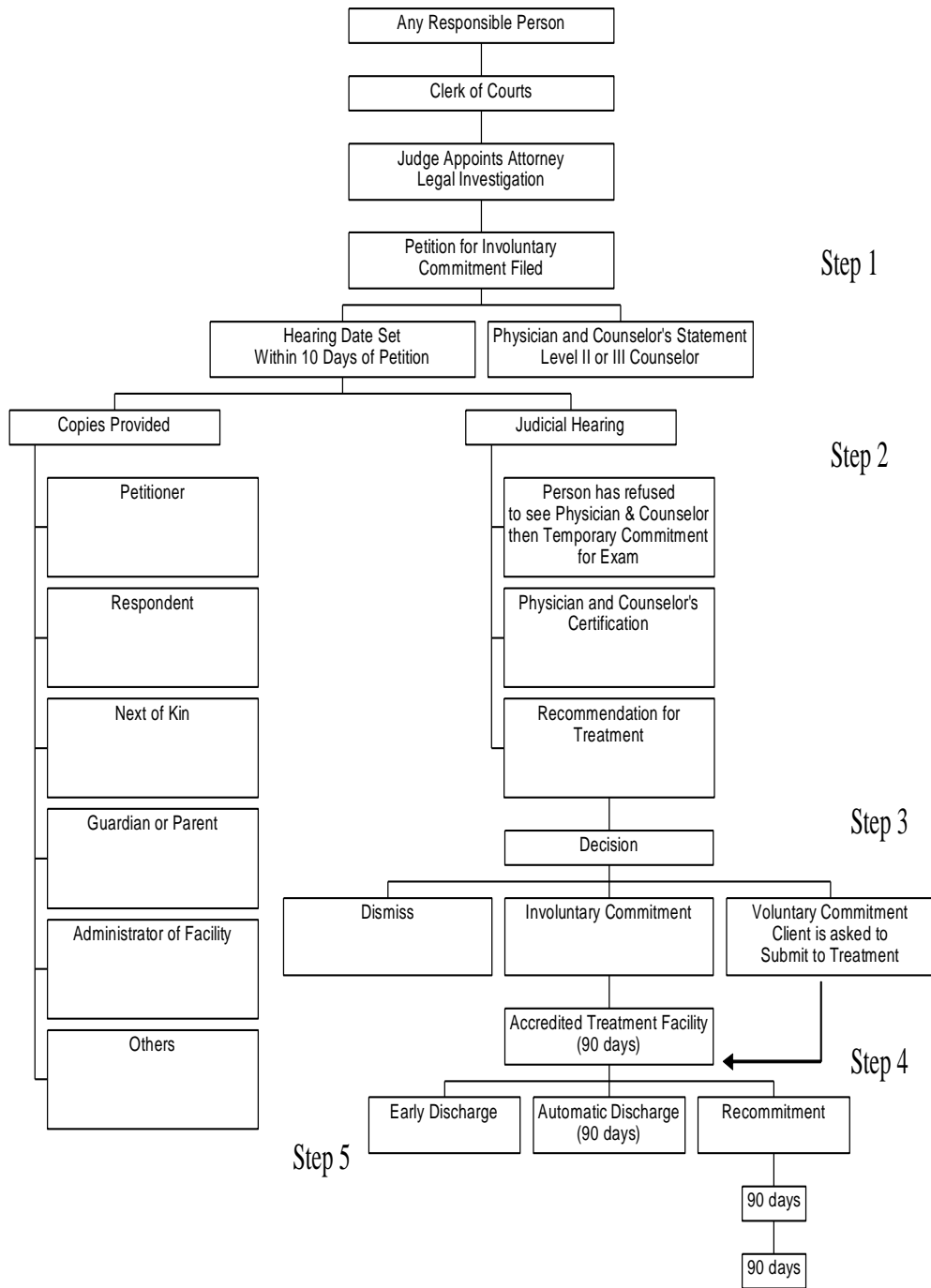
A client shall be automatically discharged when the administrator or authorized designee determines that the grounds for commitment no longer exist. (SDCL § 34-20A-68)

**C. INVOLUNTARY COMMITMENT PETITION FILED
HELD ON INVOLUNTARY COMMITMENT STATUS**

No person committed under SDCL § 34-20A-63 (emergency commitment) may be detained in any treatment facility for more than five days excluding Saturdays, Sundays, and legal holidays.

If a petition of involuntary commitment has been filed within the five days (See part IV), and the administrator of the approved treatment facility or an authorized designee finds that grounds for emergency commitment still exist, the client may be held until the petition has been heard and determined, but no longer than 10 days, excluding Saturdays, Sundays, and legal holidays, after filing the petition. (SDCL § 34-20A-69)

Involuntary Commitment Process



PART IV

INVOLUNTARY COMMITMENT

The statutes provide a procedure whereby an alcoholic or drug abuser may be ordered by the court to undergo treatment for an initial period of not more than 90 days and two 90 day recommitment periods totaling not more than an additional 180 days.

- An **alcoholic** is defined as a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted. (SDCL § 34-20A-2(3))
- A **drug abuser** is defined as a person who habitually lacks self-control as to the use of controlled drugs or substances to the extent that the person's health is substantially impaired or endangered or that the person's social or economic function is substantially disrupted. (SDCL § 34-20A-2 (8))
- A **pregnant substance abuser** is a pregnant woman who habitually lacks self-control as to the use of alcohol or controlled drugs or substances to the extent that the woman's health, or the health of her unborn child, is substantially impaired or endangered.

Involuntary commitment may be broken down in the following steps:

Step 1 - The Petition

Step 2 - Judicial Hearing

Step 3 - Commitment

Step 4 - Recommitment

Step 5 - Discharge

STEP 1 - PETITION FOR INVOLUNTARY COMMITMENT

A. WHO MAY APPLY

ANY RESPONSIBLE PERSON

A request for the commitment of an alcoholic or drug abuser may be made by a spouse, guardian, relative, physician, the administrator of an approved treatment program, or any other responsible person. (SDCL § 34-20A-70)

B. WHERE TO APPLY

APPLY TO CIRCUIT COURT

The application must be made to the circuit court through the clerk of courts of the county in which the person to be committed resides or is present.

For example, a resident of Brown County may be present at the approved treatment facility in Pennington County. Venue, in this case, is usually Brown County because the testimony of the family may be crucial for the commitment proceedings.

Another example would be a Hughes County client who is hospitalized in Minnehaha County. The petition might better be handled in Minnehaha County since the physician's certificate and testimony could more easily be accomplished there. (SDCL § 34-20A-70)

C. LEGAL INVESTIGATION AND PETITION FILED

LEGAL INVESTIGATION BY ATTORNEY

Upon receipt of a written application prepared by the clerk of courts, the circuit court judge shall appoint an attorney to represent the applicant (person who applied for the commitment of another). The appointed attorney shall investigate the grounds upon which the application is based and shall within 5 days, excluding Saturdays, Sundays, and legal holidays, submit a petition for commitment and a written report to the circuit court as to whether probable cause exists that the person (subject of commitment) is an alcoholic or drug abuser or a pregnant substance abuser. All information obtained as a result of the investigation and written report shall be documented and made part of the record of any further proceedings.

PAID FOR BY COUNTY

In any proceedings for involuntary commitment or detention, or any proceeding challenging such commitment or detention, the attorney appointed by the circuit court judge to represent the petitioner (applicant) shall represent the individuals or agencies petitioning (applying) for commitment or detention and defend all challenges to the commitment or detention. The appointed attorney shall be paid by the county where the hearing and commitment proceedings are taking place at a rate to be fixed by the circuit judge. The county shall be reimbursed for such expense by the petitioner, if the petitioner is a family member and is financially able to do so. (SDCL § 34-20A-70.1)

**D. WHAT THE PETITION MUST ALLEGE
GROUNDS FOR COMMITMENT**

The petition shall allege that the person whose commitment is sought is an alcoholic or drug abuser who habitually lacks self-control as to the use of alcoholic beverages or other drugs and the person:

1. Has threatened, attempted, or inflicted physical harm on himself or herself or on another and that unless committed in likely to inflict harm on himself or herself or on another; or
2. Is incapacitated by the effects of alcohol or drugs; or
3. Is pregnant and abusing alcohol or drugs.

A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

Note that a person cannot be committed merely because he is an alcoholic or drug abuser. A threat, attempt, or act of physical harm to self or others or the likelihood that harm may occur is necessary before the Court has the power to deprive an individual of his freedom. An alcoholic or drug abuser who is unable to take care of his basic personal needs or safety or lacks sufficient understanding or capacity to make or communicate rational decisions concerning his person is an example of a person who may be involuntarily committed. Another example is a pregnant substance-abusing woman who uses alcohol, or controlled drugs or substances to the extent that the woman's health or the health of her unborn child is substantially impaired or endangered. (SDCL § 34-20A-70)

**E. PHYSICIAN or COUNSELOR'S CERTIFICATE
DOCTOR AND COUNSELOR'S STATEMENT (LEVEL II OR III)**

The petition shall be accompanied by a certificate of a licensed physician or a certified chemical dependency counselor. The physician or the counselor must have examined the person within two days before submission of the petition to the court. If the person whose commitment is sought has refused to submit to a medical examination or counselor assessment, the fact of refusal shall be alleged in the petition.

The certificate shall set forth the physician's or the counselor's findings in support of the allegations of the petition. A physician or counselor employed by the admitting facility is not eligible to provide certification. (SDCL § 34-20A-72)

F. SETTING DATE FOR HEARING
NOTIFICATION OF INVOLVED PERSONS

Upon the filing of the commitment petition, the court shall fix a date for the commitment hearing no later than 10 days excluding Saturdays, Sundays, and legal holidays, after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the Court, shall be served on the:

1. Petitioner (person filing the petition);
2. Respondent (person whose commitment is sought);
3. Person's next of kin other than the petitioner;
4. Guardian or parent (if respondent in a minor);
5. Administrator in charge of the approved treatment facility to which the person has been committed for emergency care; and
6. Any other persons or agencies whom the court believes advisable.

A copy of the petition and certificate shall be delivered to each person notified. Service of process is usually done by the County Sheriff, Deputy Sheriff, or by some other authorized process server.

STEP 2 - JUDICIAL HEARING FOR INVOLUNTARY COMMITMENT

A. RIGHT TO COUNSEL (ATTORNEY)
COUNSEL FOR RESPONDENT

The person whose commitment is sought has the right to contest the proceedings and to be represented by counsel at every stage of the proceedings. He has the right to have counsel appointed by the court if counsel is desired but unobtainable. If the court believes that the person needs the assistance of counsel to insure a fair proceeding, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. (SDCL § 34-20A-85)

PAYMENT OF ATTORNEY FOR RESPONDENT

The attorney appointed by a court to represent the interests of a person being committed for alcohol or drug abuse shall be paid by the county where the hearing and commitment proceedings are taking place. The attorney shall be compensated at a rate to be fixed by the circuit judge. The county shall be reimbursed for the expenses by the person if the person is financially able to do so. If the person is not financially able to pay such expenses, the cost of

legal counsel shall be paid to the county by the person legally bound for the support of such person. (SDCL § 34-20A-85.1)

B. TESTIMONY

TESTIMONY IN COURT

At the hearing, the court shall hear all relevant testimony including, if possible, the testimony of at least one licensed physician and one certified chemical dependency counselor who have examined the person whose commitment is sought (the respondent). (SDCL § 34-20A-75)

The person whose commitment is sought shall be present unless the court believes that his presence is likely to be injurious to him; in this event the court shall appoint a guardian ad litem to represent him throughout the proceeding. The court shall examine the person in open court, or if advisable, shall examine the person out of court. (SDCL § 34-20A-74)

The physicians' and counselor's certificate and testimony should be centered on the issue of the respondent's alcoholism or drug abuse. The testimony of family and/or treatment staff typically concerns incapacitation or acts of physical harm. In addition, for a pregnant substance-abusing woman, the testimony also concerns the use of alcohol or controlled drugs or substances to the extent that the woman's health or the health of her unborn child is substantially impaired or endangered.

C. RIGHT TO AN EXAMINATION

2ND OPPORTUNITY FOR EXAMINATION

If the person has refused to be examined by a licensed physician or a certified chemical dependency counselor, he is then given an opportunity to be examined by a court appointed licensed physician or certified chemical dependency counselor. (SDCL § 34-20A-76)

If the person refuses to be examined by a court appointed physician or certified chemical dependency counselor, and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more evidence is necessary, the court may order a temporary commitment to an approved treatment facility for a period of not more the five days for purposes of a diagnostic examination. (SDCL § 34-20A-76)

PAYMENT FOR SERVICES TO BE PAID BY COUNTY

A licensed physician or certified chemical dependency counselor appointed by the court to examine and assess a person for the purpose of involuntary commitment shall be paid by the county where the hearing and commitment proceedings take place. The physician or counselor shall be compensated for such services in an amount fixed by the circuit judge. The county shall be reimbursed for such expense by the person if the person is financially able to do so. If the person is not financially able to pay such expense, the cost of physician or counselor

examination shall be paid to the county by the person legally bound for the support of such person if financially able to do so. (SDCL § 34-20A-76.1)

REFUSAL RESULTS IN TEMPORARY COMMITMENT FOR DIAGNOSTIC EXAMINATION

STEP 3 - THE INVOLUNTARY COMMITMENT

A. FINAL DETERMINATION BURDEN OF PROOF

If after hearing all relevant evidence, including the results of any diagnostic examinations, the court finds that grounds for involuntary commitment have been established by “clear and convincing proof”, it shall make an order of commitment to any appropriate accredited/approved treatment facility. The court may not order a commitment of a person unless it determines that the proposed facility is able to provide adequate, appropriate, beneficial treatment. (SDCL § 34-20A-77)

ADMISSION IMPOSSIBLE, TEMPORARY PROVISION

If it is shown to the satisfaction of the court that a committed person may not at once be admitted to the approved facility, and may not with safety, be allowed to go at liberty, the court shall require that the patient be provided for until admission can be accomplished, or until the occasion no longer exists. In any event, the patient may not be detained more than thirty days. (SDCL § 34-20A-77.1)

For example, if the court orders a commitment of a person to the Human Services Center in Yankton, but admission to the facility may not occur immediately and the person is incapable of safely awaiting treatment outside of a facility, the court may require that the person be provided for at an approved treatment facility in Sioux Falls.

PAYMENT

If treatment of a person involuntarily committed is provided by an approved treatment facility, the payment for treatment may be assessed to the individual, to legally responsible relatives, to a guardian, to the county of residence if indigent or billed to the Division through a contract with the approved treatment facility. The payment for treatment of a person involuntarily committed to an accredited treatment facility shall be assessed to the individual, legally responsible relatives or guardians. The payments for treatment of a person involuntarily committed to the Human Services Center is subject to the requirements found in SDCL § 27A-13. Payment for treatment as outlined also applies to the temporary placement of an involuntarily committed person to an approved facility while awaiting admission to the court-ordered facility. (SDCL § 34-20A-89)

B. LENGTH OF COMMITMENT
UP TO 90 DAYS COMMITMENT

A person involuntarily committed under this section shall remain in the custody of the treatment facility for a period not to exceed 90 days unless discharged sooner. (SDCL § 34-20A-81)

C. PLACEMENT OF COMMITMENT - TRANSFER
COMMITMENT POSSIBLE TO ANY ACCREDITED TREATMENT FACILITY

A person involuntarily committed shall remain in the custody of the facility for the period of commitment. The facility has the statutory right to delegate physical custody of the person from one accredited treatment facility to another if a transfer is advisable based on the committed person's treatment needs. A written report shall state the reasons why a transfer to another facility or program is necessary to meet the treatment needs of the committed person. Notice of the transfer and the reasons therefore shall be given to the court, the person's attorney, and the person's immediate family, subject to rules of confidentiality. (SDCL § 34-20A-78) An accredited treatment facility may refuse a request of a competent patient, spouse, parent, sibling, adult child or guardian to accept the patient for commitment to treatment. (SDCL § 34-20A-79)

Since the commitment by the court is to the custody of a facility, the court should gather information concerning the best possible treatment for the person prior to making the commitment order. Not only is the person's needs a consideration when determining place of commitment, but also the needs of the family and the facility's services should be taken into consideration.

D. TRANSPORTATION
SHERIFF, FAMILY, FRIENDS MAY TRANSPORT

Upon commitment, the county sheriff may assist in the transportation of the committed person to the approved facility. Family, neighbors, friends, AA sponsor, or other interested persons may also bring the person to the facility.

E. TREATMENT PLAN
TREATMENT

It is not the court's responsibility to designate an appropriate course of treatment. A committed person shall be treated in accordance with the Division of Behavioral Health standards and requirements for accredited/approved treatment facilities.

F. VIOLATION OF THE COMMITMENT ORDER
AWOL

When a committed client leaves a facility without being properly discharged, this violation should be reported to the circuit court who issued the commitment order. The court may then issue a bench warrant for the apprehension of the person. Once apprehended, the person can be held in contempt of court or the court will take other appropriate action.

HABEAS CORPUS

A committed person may at any time seek to be discharged by the issuance of a writ of Habeas Corpus. (SDCL § 34-20A-87)

G. DISCHARGE AFTER 90 DAYS
AUTOMATIC DISCHARGE UNLESS RECOMMITMENT SOUGHT

A committed person unless discharged sooner will be automatically discharged after 90 days unless a recommitment order is obtained from the court before the expiration of the commitment period. By requiring an automatic discharge after 90 days, the statute guarantees that a committed person's condition will be reviewed by the Court before detention may be continued.

(SDCL § 34-20A-81)

STEP 4 - INVOLUNTARY RECOMMITMENT

A. WHO MAY FILE
ADMINISTRATOR DESIGNEE RESPONSIBLE FOR RECOMMITMENT PETITION

Only the administrator or an authorized designee of the facility to which the person is committed may petition the court for a recommitment order, based on the same grounds of the first involuntary commitment. The administrator should contact the court no later than the 80th day of the 90 day commitment order to insure that the proper paperwork, service, and testimony can be completed before the 90 day period expires. (SDCL § 34-20A-81)

B. GROUNDS FOR RECOMMITMENT

The recommitment petition will be based on the same grounds as those for involuntary commitment as outlined on page 17, STEP 1, D. of this manual. (SDCL § 34-20A-70)

C. LENGTH OF RECOMMITMENT
90 DAYS RECOMMITMENT - 2 RECOMMITMENT ORDERS ALLOWED

The court may issue an order for recommitment for a further period of 90 days, unless sooner discharged. In addition, the administrator of the facility or authorized designee may seek a second recommitment on the same grounds as those for the original involuntary commitment, for an additional 90 days. Thus, a person could be initially involuntarily committed for 90 days and twice recommitted for periods not exceeding 90 days for a potential total period of 270 days of court-ordered treatment. Only two recommitment orders are permitted. (SDCL §§ 34-20A-81, 34-20A-82, 34-20A-83)

D. PHYSICIAN OR COUNSELOR'S CERTIFICATE
DOCTOR'S OR COUNSELOR'S CERTIFICATE NECESSARY (LEVEL II OR III)

The petition for recommitment must be accompanied by a licensed physician or a certified chemical dependency counselor's certificate. The physician or the counselor must have examined the person within 2 days before submission of the petition to the court, unless the person whose recommitment is sought has refused to submit to a medical examination or counselor assessment. The fact of this refusal shall be alleged in the petition. The certificate shall set forth the physician's or the counselor's findings in support of the allegations of the petition. A physician or counselor employed by the admitting facility is not eligible to provide certification. (SDCL § 34-20A-72)

E. THE RECOMMITMENT PROCEEDINGS
COURT PROCEEDINGS

Upon the filing of a recommitment petition, the court shall fix a date for hearing no later than ten days, excluding Saturdays, Sundays, and legal holidays, after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served on the petitioner, the person whose recommitment is sought, his next of kin if other than the petitioner, the original petitioner if different from the recommitment petitioner, at least one parent or legal guardian if a minor, and any other person the court believes advisable to be notified. At the hearing, the court shall proceed as outlined in STEP 2, page 18. Note that a guardian ad litem may be appointed, if the person's presence is likely to be injurious to his health. (SDCL § 34-20A-84)

STEP 5 - DISCHARGE FROM INVOLUNTARY COMMITMENT

A. DISCHARGE UPON EXPIRATION OF COURT ORDER
AUTOMATIC DISCHARGE

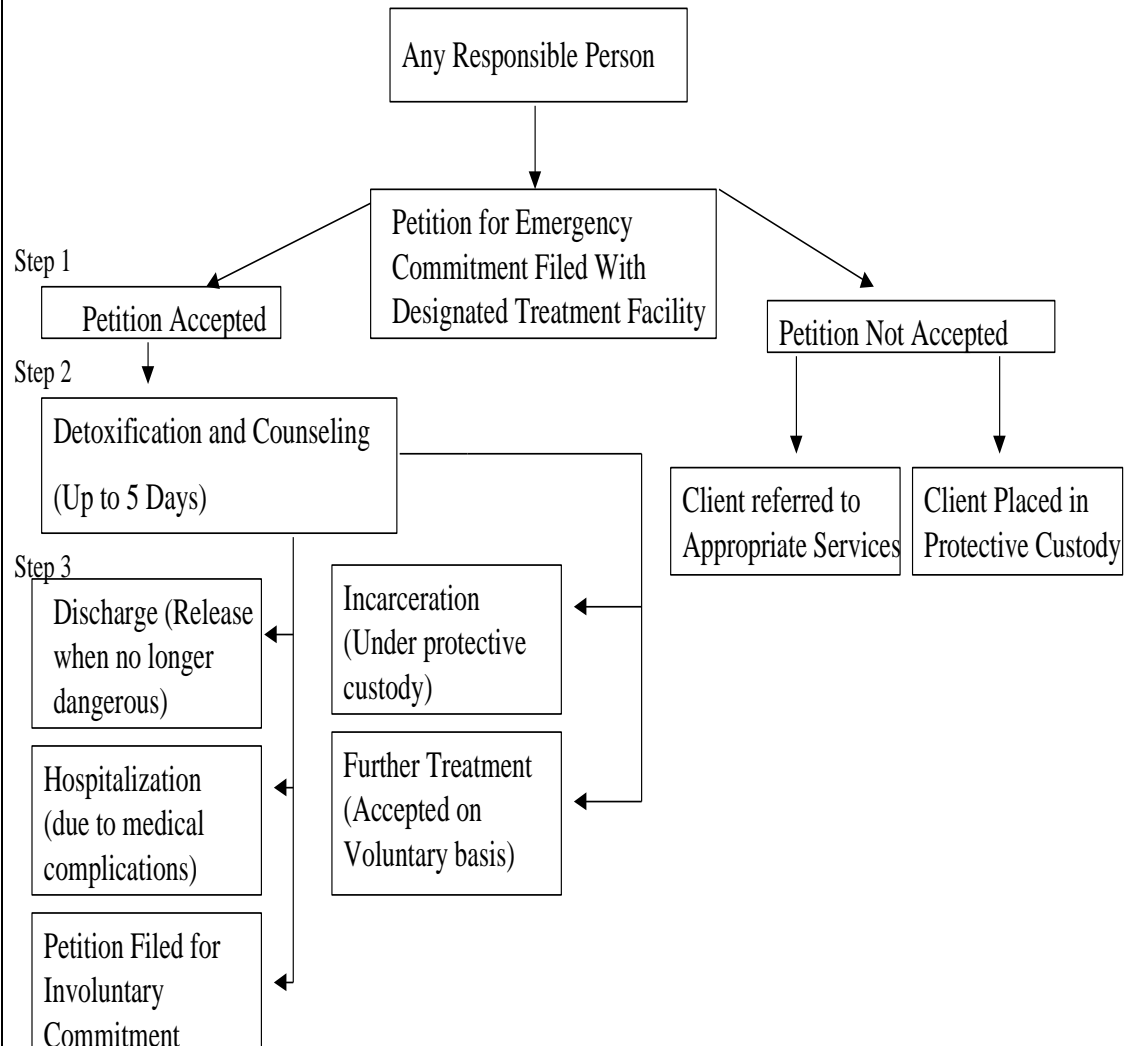
Unless recommitted, a person committed must be discharged by the facility no later than 90 days after the person has been physically placed in a commitment facility. Unless recommitted for a second time, a person must be discharged from the facility no later than 90 days after the recommitment order takes effect. (SDCL §§ 34-20A-81 34-20A-82)

B. STATUTORY CONDITIONS FOR EARLY DISCHARGE
EARLY DISCHARGE

A person committed to the custody of a facility for treatment shall be discharged at any time if either of the following conditions are met:

1. In case of commitment on the grounds of likelihood of infliction of physical harm upon himself, or another, that the likelihood of such harm no longer exists; or,
2. In the case of commitment on the grounds of the need of treatment and incapacity, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.
(SDCL § 34-20A-80)
3. In the case of commitment of a pregnant substance abuser on the grounds of the likelihood of endangerment to her own health, or the health of her unborn child, the likelihood of such endangerment no longer exists.

Emergency Commitment Process



PART V

COMMITMENT ISSUES

A. STATUTORY LIMITATION LIMITS OF COMMITMENT

Statutes govern the commitment process of alcoholics and drug abusers. A person may not be committed upon a whim or the arbitrary decision of another individual. Within each statute that provides for commitment, there are built in limitations which safeguard individual rights while at the same time protect the needs of society.

B. RESOURCES AND CONSTRAINTS LACK OF APPROVED FACILITIES

Implementation of commitment procedures may be limited by other factors such as the lack of resources, geographic limitations, or limits on length of involuntary commitments.

Similar constraints exist in terms of the distribution of facilities. Several counties do not have an approved or an accredited treatment facility. This makes implementation of an emergency commitment difficult without the cooperation of law enforcement authorities, and the availability of alternative forms of transportation. In such areas, involuntary commitment is often the starting point in the process of obtaining help.

Other considerations may include the coordination of services to timely serve the special needs of women, handicapped individuals, non-English speaking clients, as well as psychiatrically disturbed and violent alcoholics or drug abusers.

CLIENT RIGHTS

Client rights include, but are not limited to:

1. All rights guaranteed under the constitution and laws of the United States and South Dakota.
2. All rights included in the Division of Behavioral Health standards and requirements for accredited treatment facilities.

CLIENT RESPONSIBILITIES

Besides the rights of clients, there are also client responsibilities. Since the behavior of each client has the potential to impact upon others in the treatment program, other clients may be unable to benefit from treatment if one client is extremely disruptive or abusive. Failure to abide by program rules may be grounds for dismissal from the program.

PART VI

SAMPLE DOCUMENTS

This section contains samples of the documents that are used during the commitment processes and sample criteria which, if present in an individual, should trigger the commitment process.

The emergency commitment application, screening instrument, and the petition for involuntary commitment forms are available through your local substance abuse provider or law enforcement agency.

SAMPLE CRITERIA FOR EMERGENCY COMMITMENT

Sample criteria have been developed for use in determining whether or not a person should be accepted for treatment in emergency commitment situations, or transferred to more appropriate treatment settings. The criteria listed are only a sample of conditions that might exist when a person arrives at an approved treatment facility.

The person might:

1. Be suicidal.
2. Be unstable and an immediate threat to self or others.
3. Have a blood alcohol level higher than 30%.
4. Have a high potential for seizures during the course of withdrawal.
5. Have a high potential for delirium tremens (DT's).
6. Show signs of tremulousness (indicating continued withdrawal).
7. Have blood pressure problems (indicating continued withdrawal).

Systolic - Below 110 or over 180 for men
Below 90 or over 170 for women

8. Have other acute physical/medical complications related to the use or discontinuation of substance use that need constant observation.
9. Be a pregnant substance abuser that is abusing alcohol or drugs with the likelihood of impairing or endangering her health, or the health of her unborn child.

Remember, a person must be intoxicated or incapacitated by the effects of alcohol or drugs, or be a pregnant substance abuser before grounds exist for emergency commitment. Under all circumstances, the commitment procedure is controlled by the discretion of the treatment facility administrator or authorized designee.

SAMPLE CRITERIA FOR INVOLUNTARY COMMITMENT

Sample criteria have been developed for use in determining whether or not a person should be involuntarily committed for treatment. The criteria should be used as a guide by the court in its decision-making process, by attorneys in their presentation of evidence, and by witnesses in their testimony of conditions and grounds for involuntary commitment.

In order for a person to be committed, the person must be an alcoholic or drug abuser who habitually lacks self-control as to the use of alcoholic beverages or other drugs. Criteria for habitually lacking self-control might include:

1. A need for daily use of alcohol or drugs for adequate functioning; or
2. An inability to cut down or stop drinking or taking drugs; or
3. Repeated, unsuccessful efforts to control or reduce excessive drinking by "going on the wagon" (periods of abstinence) or restricting drinking to certain times of the day; or
4. Binges (remaining intoxicated throughout the day for at least two days); or
5. Amnesic periods for events occurring while intoxicated (blackouts); or
6. Continuation of drinking despite a serious physical disorder that the individual knows is exacerbated by alcoholic use; or
7. Drinking of non-beverage alcohol (such as cough medicine or mouthwash); or
8. Be a pregnant substance abuser who repeatedly abuses alcohol or drugs with the likelihood of impairing or endangering her health, or the health of her unborn child.

An individual who substantially meets these criteria could clearly be considered as lacking self-control as to the use of alcoholic beverages or other drugs.

In addition to habitually lacking self-control, the person might have threatened, attempted, inflicted, or be likely to inflict harm on himself or herself or on another or is incapacitated. Examples might include:

1. Repeated threats to kill himself or another; or
2. Attempted suicide, severe depression; or
3. Vomiting or gagging while unconscious; or
4. Incontinent of urine or feces while unconscious; or
5. Self-inflicted wounds.

SCREENING INSTRUMENT

Rather than transporting a person to an approved treatment facility and finding that emergency commitment is not necessary or is not the appropriate process to handle the person involved, it is sometimes best to telephone the treatment facility first, especially where extensive mileage to the facility is involved. The administrator of the facility can then assess the appropriateness of the case in question before time and money is expended in transportation of the person to be committed to the facility.

Note that the Commitment Call form is a screening instrument only. It does not serve as a commitment application. In addition, transportation to the facility as a result of the telephone call does not mean that the person will be automatically accepted for commitment when he arrives at the facility. The administrator of the approved treatment facility or authorized designee must still determine if the grounds for emergency commitment have been met.

